A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

First Appeal No.127 of 2006

M/s Shriram Steels Raipur

versus

M/s Vandana Trailers

JUDGMENT

Seen
26-11-07

Post for 26-11-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

First Appeal No.127 of 2006

Appellant/ Defendant	M/s Shriram Steels Raipur, through its Proprietor, Chandanidih, G.E.Road, Distt. Raipur (Chhattisgarh)
	versus
Respondent/ Plaintiff	M/s Vandana Trailers, through its owner Smt. Shushma Jaiswal, aged about 37 years, W/o Shri Trilok Chand Jaiswal, R/o Ward No.9, Sakti, Distt. Janjgir-Champa (C.G.)

Appeal under Section 96 of the Code of Civil Procedure, 1908

Present : Shri Sanjay K. Agrawal, counsel for the appellant.
Shri H.S.Patel, counsel for the respondent.

JUDGMENT

(Delivered on this 26th day of November, 2007)

Being aggrieved by the judgment and decree dated 17-03-2006 passed by the Additional District Judge, Sakti in Civil Suit No.7-B/2003, whereby the suit for recovery of Rs.1,49,598=31 was decreed in favour of the respondent/plaintiff, the appellant/defendant has preferred this appeal.

(2) In this appeal, it is not in dispute that the respondent/plaintiff, a woman entrepreneur, has business of steel at Sakti in the name of M/s Vandana Trailers, Sakti. The appellant/defendant also deals in supply of steel and has his business in the name of M/s Shriram Steels at Raipur. He also undertakes supply of steel as per orders placed. M/s Ankur Steel Agency is also situated at Raipur. It is also not in dispute that the

appellant/defendant had received two demand drafts of Rs.1,00,000/- each at Raipur on 11-02-2002 and 21-02-2002.

(3) The respondent/plaintiff pleaded that outside traders after orally entering into a contract at Sakti used to supply raw material at Sakti for meeting requirements of her business for which payment was made through Bank drafts. The appellant/defendant used to supply raw materials i.e. steel either itself or through its agents who would visit Sakti, enter into an oral agreement and in pursuance thereto supply material at Sakti. Prior to the year 2001, the appellant defendant used to supply raw material, i.e., steel mostly on the basis of requirements communicated through telephone calls.

(4) The appellant/defendant obtained through deceitful means, on demand, Rs.1,00,000/- on 11-02-2002 and Rs.1,00,000/- on 21-02-2002 through Bank drafts from the respondent/plaintiff. It was only on receiving a statement of account from the appellant/defendant that it was found that sum of Rs.1,26,980/- had been fraudulently received in excess by the appellant/defendant. Despite notices dated 01-07-2003 and 04-08-2003 sent by the respondent/plaintiff, the appellant/defendant did not return the amount of Rs.1,26,980/-. On these premises, the plaintiff filed the suit for recovery of Rs.1,49,598=31 with interest @ 11.25% per annum from 01-04-2002 till recovery.

(5) The appellant/defendant pleaded that he had ever entered into an agreement directly with the respondent/plaintiff for supply of raw material, i.e., steel. It was pleaded that the respondent/plaintiff had authorised M/s Ankur Steel Agency, Raipur for purchase of raw materials through different firms and it was M/s Ankur Steel Agency, Raipur, which had

placed orders with the respondent/plaintiff-firm while undertaking responsibility for payment. A written agreement Ex.D-19 was entered into between M/s Ankur Steel Agency as the authorised agent of the respondent/plaintiff and the appellant/defendant on 28-12-2000. M/s Ankur Steel Agency, Raipur undertook the sole responsibility of delivering the raw material supplied to it by the appellant/defendant to the respondent/plaintiff at Sakti and to obtain payment from her. It was specifically denied that the appellant/defendant or his authorized agent ever visited Sakti or entered into an agreement directly with the respondent/plaintiff. It was, thus, specifically pleaded that for want of territorial jurisdiction to try the suit no cause of action arose in favour of the respondent/plaintiff and against the appellant/defendant for institution of the suit before the Additional District Judge, Sakti.

(6) The appellant/defendant filed a counter claim for Rs.71,526/- pleading that for the raw materials supplied by it to the respondent/plaintiff through M/s Ankur Steel Agency, Raipur, the respondent/plaintiff had not sent a credit note and had also not adjusted the amounts shown below:

(1)	Shri Krishna Steels Unit-2	29-05-01	Rs. 893=00
(2)	Kisan Mechanical Works	16-10-01	Rs.17,485=00
(3)	M/s G. Steel Pvt. Ltd.	12-11-01	Rs.25,793=00
(4)	Shri Ram Steels	12-11-01	Rs.27,355=00

		Total:	**Rs.71,526=00**
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(7) The learned Additional District Judge, Sakti framed following issues and recorded finding as shown against them as under:

क्रमांक	वाद–प्रश्न	निष्कर्ष
1-	क्या वादी ने प्रतिवादी को 1,26,980/रूपये के मूल्य का भुगतान पेटे अधिक रूप से प्रतिवादी को भुगतान कर दिया है ?	हाँ ।
2-	क्या वादी, प्रतिवादी ने 1,26,980/रूपये अतिरिक्त भुगतान की गई राशि और उस पर दिनांक 01.4.02 से लेकर 31.10.03 तक ब्याज 22618=31 पैसे प्राप्त करने का अधिकारी है ?	हां ।
3-	क्या वादी, वाद प्रस्तुति दिनांक से उक्त बकाया राशि प्राप्ति दिनांक तक 11.25 प्रतिशत वार्षिक की दर से ब्याज भी प्राप्त करने का अधिकारी है ?	हां ।
4-	क्या वादी का वाद इस न्यायालय के स्थानीय क्षेत्राधिकार के भीतर वाद–कारण उत्पन्न नहीं होने के कारण, पोषणीय नहीं है ?	पोषणीय हैं ।
5-	क्या वादी ने वाद का उचित मूल्यांकन किया है ?	हां ।
6-	क्या वादी ने प्रतिवादी फर्म के स्वामी को पक्षकार नहीं बनाया है इसलिये पक्षकारों के असंयोजन के कारण वादी का वाद पोषणीय नहीं है ?	पोषणीय हैं ।
	अतिरिक्त वाद–प्रश्न	
6(अ)	क्या प्रतिवादी, वादी से कुल 71, 527/इकहत्तर हजार पांच सौ सत्ताईस रूपये दिनांक 29.5. 2001, 16.10.2001, 12.11.2001 एवं 12.11.2001 को क्रमशः 893/रूपये, 17485/रूपये, 25,793/रूपये एवं 27,355/रूपये कुल रूपये 71,526/रूपये क्रेडिट नोट की राशि को, प्रतिवादी को समायोजित करने का अधिकार है ?	नहीं ।
7-	सहायता एवं वाद–व्यय ?	वादी का वाद स्वीकार.

(8) Shri Sanjay K. Agrawal, learned counsel for the appellant/defendant, while assailing the impugned judgment and decree, argued that the respondent/plaintiff, having failed to establish that there was any privity of contract between her and the appellant/defendant, no cause of action accrued to the respondent/plaintiff for the institution of suit

at Sakti and the Additional District Judge, Sakti had no territorial jurisdiction to entertain the suit. It was further argued that the appellant/defendant had entered into an agreement, Ex.D-19 with M/s Ankur Steel Agency, Raipur and not with the respondent/plaintiff. Under the said agreement, the appellant/defendant had agreed to supply material to M/s Ankur Steel Agency, Raipur, which was under responsibility to supply the same to the respondent/plaintiff and to obtain payment. It was further agreed that under the agreement Ex.D.19 any dispute arising between the appellant/defendant and M/s Ankur Steel Agency, Raipur would be referred to arbitration at Raipur and the respondent/plaintiff would not be liable in any manner for the transaction between the appellant/defendant and M/s Ankur Steel Agency, Raipur.

(9) Reference was made to the statement in paragraphs 5 to 8 by Smt. Sushma Jaiswal, proprietor of the respondent/plaintiff, the invoices sent by the appellant/defendant to the respondent/plaintiff through M/s Ankur Steel Agency, Raipur Ex.D-1 to D-7, Ex.D-1 written by Girdhar Jaiswal, P.W.-2, Accountant of the respondent/plaintiff and his admission in paragraphs 9 and 10 while arguing that they lend support to the agreement Ex.D-19 entered into between the appellant/defendant and M/s Ankur Steel Agency, Raipur. It was further argued that if the respondent/plaintiff had received the material directly from the appellant/defendant and not through M/s Ankur Steel Agency, Raipur, as demonstrated by the abovementioned documents, the respondent/plaintiff ought to have produced the invoices received by her to rebut the documentary evidence led by the appellant/defendant. She failed to explain this in paragraph 8 of her testimony. Paragraph 5 of her testimony also ran contrary to the pleadings in paragraph 2 of the plaint and lends support to the case for the

appellant/defendant that there was no privity of contract between the appellant/defendant and the respondent/plaintiff. It was also argued that the two demand drafts No.272322 dated 11-02-2002 and No.567812 dated 21-02-2002 for Rs.1,00,000/- each were of the Bank of Indore at Bilaspur (Chhattisgarh) and the Punjab National Bank, Seoni (Madhya Pradesh) respectively. Cause of action, if any, for institution of suit for recovery of such payment would have accrued at Raipur, where the payment through the abovementioned demand drafts was received and not at Sakti. No reference to the abovementioned demand drafts was made by the respondent/plaintiff in her notices Ex.P-3 and P-4. It was further argued that the respondent/plaintiff did not plead or explain as to with reference to what transaction the said amounts were received. It was also contended that rejection of the counter claim by the learned Additional District Judge, Sakti was contrary to law because Girdhar Jaiswal, P.W.-2, the Accountant for the respondent/plaintiff admitted not only in letter Ex.D-1 sent by him to the appellant/defendant but also in his testimony that Rs.32,145/- were to be paid by the respondent/plaintiff to Kisan Mechanical Works, Raipur. He further admitted in paragraph 4 of his affidavit that Krishna Steel Agency, Raipur and Kisan Mechanical Works, Raipur were the units of the appellant/defendant. It was also argued that the impugned judgment and decree was liable to be set aside because the respondent/plaintiff had failed to produce any evidence to show that the amount of Rs.1,00,000/- each received through the two demand drafts by the appellant/defendant were in connection with any supply of material by the appellant/defendant to the respondent/plaintiff in pursuance of any agreement entered into at Sakti. Merely because the appellant/defendant had sent the details of the account of the

respondent/plaintiff, as it stood in his books of account for the period from 01-04-2001 to 31-03-2002, it would not *per se* confer jurisdiction on the Court at Sakti for institution of suit. The appellant/defendant was required to prove that these amounts were paid by her pursuant to supply to material by the appellant/defendant directly at Sakti and also in pursuance to any agreement between the appellant/defendant and the respondent/plaintiff. The testimony of Sanjay Jain, the proprietor of M/s Ankur Steel Agency, Raipur proved that there was no privity of contract between the appellant/defendant and the respondent/plaintiff. It was also argued that the interest awarded by the trial Court at the rate of 11.25% per annum on Rs.1,26,980/- from the date of institution of the suit to the date of the judgment was arbitrary.

(10) On the other hand, Shri H.S.Patel, learned counsel for the respondent/plaintiff, while supporting the impugned judgment and decree, has argued that the document Ex.D-19 is a concocted document to which the respondent/plaintiff is not a signatory. Thus, it is not a *tripartite* agreement. The stamps for the agreement were purchased on 21-04-1999 for executing a special power of attorney, upon which, subsequently, the said agreement between the appellant/defendant and M/s Ankur Steel Agency, Raipur was executed on 28-12-2000. Reference was made to the counter claim preferred by the respondent/plaintiff, in which the appellant/defendant had admitted that cause of action for making the counter claim arose within the territorial jurisdiction of the Court at Sakti. It was also submitted that the material was eventually supplied at Sakti to the respondent/plaintiff and, therefore, Sakti, being the place of performance of contract, the Court at Sakti had jurisdiction to entertain the suit. It was also argued that the application introducing the counter claim

under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (henceforth 'the Code') was neither signed nor verified and was, therefore, rightly rejected by the Court. On these premises, it was prayed that the appeal was liable to be dismissed.

(11) Having considered the rival submissions, I have perused the record. Since the plea of jurisdiction of the Court at Sakti goes to the root of the matter, I would first deal with the same. The territorial jurisdiction of a Court is in general determined by the provisions of Section 20 of the Code, which reads:

> "**20. Other suits to be instituted where defendants reside or cause of action arises. –** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction–
>
> (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
>
> (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
>
> (c) the cause of action, wholly or in part, arises.

Explanation.– A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

(12) Since the suit was instituted at Sakti and not in any of the places mentioned in clause (a) or (b) of Section 20 of the Code, it has to be examined whether the cause of action for institution of suit arose either wholly or in part at Sakti. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. In suits arising out of contract, cause of action arises within the meaning of clause (c) of Section 20 of the Code at any of the following places:

(i) the place where the contract was made, or

(ii) the place where the contract was to be performed or came to be performed, or

(iii) the place wherein for performance of the contract any money due thereunder expressly or impliedly was paid.

(13) Making of a contract at the place of suing is, thus, a part of cause of action and a suit on such a contract could be filed at a place where the contract was made or concluded. Determination of place where it came to be made is part of the law of contract. Therefore, the first question that arises for determination, is whether there was a privity of contract between

the appellant/defendant and the respondent/plaintiff. It was averred by the plaintiff that the agents of the appellant/defendant used to visit Sakti, seek orders for delivery of material and thereafter deliver the same at Sakti and obtain payment at Sakti. However, in her cross-examination paragraph 5, Smt. Sushma Jaiswal, P.W.-1 stated that she was unable to tell the name of the person with whom contract for purchase of iron material was entered into. She admitted that she did not remember the name of any agent of the appellant/defendant, who after visiting Sakti had entered into an oral agreement for supplying iron material at Sakti. In paragraph 6, she again admitted that she did not know the name of any agent of the appellant/defendant. Her accountant, Girdhar Gopal Jaiswal, P.W.-2 also admitted that he would not know the name of any agent of the appellant/defendant, who visited Sakti and entered into an agreement with the respondent/plaintiff.

(14) The appellant/defendant had, in the written statement, specifically denied that it had entered into an agreement with the respondent/plaintiff at Sakti for supply of material. On the other hand, it was specifically pleaded that M/s Ankur Steel Agency, Raipur, an agent of the respondent/plaintiff had entered into an agreement with the appellant/defendant, under which the appellant/defendant was under a liability only to supply the material ordered by M/s Ankur Steel Agency at Raipur, which, in turn, was responsible to send the material to Sakti and to obtain payment. This is corroborated not only by Ex.D-19, but also by the testimony of Sanjay Jain, D.W.-2, proprietor of M/s Ankur Steel Agency, Raipur. Since both the appellant/defendant and M/s Ankur Steel Agency, are located at Raipur, such an agreement seems to be natural that material would be supplied on order of M/s Ankur Steel Agency, Raipur at

Raipur and the liability to deliver it to the respondent/plaintiff and to receive payment would be squarely on M/s Ankur Steel Agency, Raipur. Letter Ex.D-1 executed by Girdhar Jaiswal, P.W.-2, Accountant of the respondent/plaintiff also shows that M/s Ankur Steel Agency, Raipur was the agent of the respondent/plaintiff, which had agreed to settle the accounts with M/s Ankur Steel Agency, Raipur separately from Sakti. The appellant/defendant has also produced invoices Ex.D-1 to D-7, which substantiate the pleading of the defendant that in pursuance of the agreement, material was supplied by the appellant/defendant at Raipur to M/s Ankur Steel Agency, Raipur, which was, in turn, responsible for delivery of the material at Sakti and obtain payment from the respondent/plaintiff. If the invoices Ex.D-1 to D-7 were concocted documents, this could be easily rebutted by the respondent/plaintiff by producing the original invoices which would have shown that the material was supplied directly to it by the appellant/defendant. Smt. Sushma Jaiswal was confronted with this situation and admitted in paragraph 8 that she would not know whether in the invoices received from the appellant/defendant, it was mentioned or not that the material was sent through M/s Ankur Steel Agency, Raipur. In paragraph 13, she admitted that the accounts with M/s Ankur Steel Agency, Raipur have been settled and no money was due. This re-enforces the pleadings of the appellant/defendant that Sanjay Jain, D.W.-2, proprietor of M/s Ankur Steel Agency, Raipur had entered into an agreement Ex. D.19 with the appellant/defendant for receiving material on order while undertaking the liability to deliver the same to the respondent/plaintiff at Sakti and obtain payment. Ex.D-19 clearly shows that the respondent/plaintiff would not be liable for making payment directly to the appellant/defendant, but this

responsibility would solely rest with M/s Ankur Steel Agency, Raipur. Considering the testimony of Smt. Sushma Jaiswal in paragraphs 5 and 6 and Girdhar Jaiswal, P.W.-2 in paragraph 5, the respondent/plaintiff has utterly failed to prove that there was a privity of contract between the appellant/defendant and the respondent/plaintiff for supply of material to the respondent/plaintiff at Sakti and to receive payment at Sakti. It is established that the appellant/defendant entered into an agreement with M/s Ankur Steel Agency, Raipur vide Ex.D-19, whereby it agreed to supply material to M/s Ankur Steel Agency, Raipur at Raipur and in turn M/s Ankur Steel Agency, Raipur agreed to deliver the material to the respondent/plaintiff and to obtain payment and to give it to the appellant/defendant. To reiterate, the admission in paragraph 13 referred above by Smt.Sushma Jaiswal P.W.1, the proprietor of the plaintiff, fully substantiates and lends support to Ex.D.19. Merely on the strength of the statement of account maintained by the appellant/defendant Ex.P-1, it cannot be construed that a contract was entered into at Sakti between the parties.

(15) It was pleaded by the respondent/plaintiff in paragraph 3 of the plaint that the appellant/defendant had deceitfully obtained, on demand, the payment under demand drafts No.272322 dated 11-02-2002 for Rs.1,00,000/- and No.567812 dated 21-02-2002 for Rs.1,00,000/-. No evidence was led to show that the payment was made at Sakti. Acceptance of offer upon the making of demand by the appellant/defendant even though deceitful would be complete as against the respondent/plaintiff when the two demand drafts were accepted by the appellant/defendant at Raipur. In other words, an offer of a demand matures into conclusion of a contract when the demand drafts were

received by the appellant/defendant at Raipur. Thus, this transaction, which gave rise to a cause of action for institution of suit, was completed at Raipur and not at Sakti. The ledger maintained by the respondent/plaintiff Ex.P-2 shows that the demand draft No.272322 for Rs.1,00,000/- was prepared at the Bank of Indore, Bilaspur (Chhattisgarh) on 11-02-2002 and the demand draft No.567812 was drawn on the Punjab National Bank, Seoni (Madhya Pradesh) for Rs.1,00,000/- on 21-02-2002. Thus, both these demand drafts were not drawn at Sakti. There is nothing to show that the journey of these two drafts commenced at Sakti. It is well settled that if payment was made on demand, the place of acceptance of the payment would furnish the cause of action. In this case, the drafts were prepared at Bilaspur (Chhattisgarh) and Seoni (Madhya Pradesh) and were received by the appellant/defendant at Raipur. Smt. Sushma Jaiswal had admitted in paragraph 6 that she had sent the draft through courier, but she could not produce the receipt issued by the courier service agency. The necessary foundation for this was also not laid by the respondent/plaintiff in paragraph 5 of the plaint. Notices Ex.P.3 and P.4 sent by the respondent/plaintiff were wholly silent on this issue. Thus, the cause of action for refund of the amounts paid in excess through demand drafts on a deceitful demand by the appellant/defendant arose at Raipur, where the demand drafts were accepted by the appellant/defendant. It is also to be noted that in paragraph 3 of the plaint, it has not been specifically pleaded as to when the material was supplied by the appellant/defendant at Sakti for which the two demand drafts were sent. The pleadings are that the payment through two demand drafts was obtained deceitfully, meaning thereby, no material whatsoever was supplied by the appellant/defendant to the respondent/plaintiff at Sakti for

the amount of Rs.1,26,980/- received by the appellant/defendant in excess at Raipur. In this view of the matter, cause of action for institution of suit for the amount of Rs.1,26,980/- with interest did not arise at Sakti but only at Raipur, where the payment, through demand drafts of Rs.1,00,000/- each, was received by the appellant/defendant.

(16) To sum up, neither the respondent/plaintiff was able to prove that there was a privity of contract between the parties for supply of material at Sakti nor has it been able to prove that the excess payment for which the suit was instituted was received by the appellant/defendant within the territorial jurisdiction of the Court at Sakti. Thus, no cause of action for institution of suit in the Court of Additional District Judge, Sakti arose in favour of the respondent/plaintiff.

(17) In the counter claim made by the appellant/defendant, it was not admitted by the appellant/defendant that cause of action for the suit had arisen at Sakti, but had mentioned that in view of the institution of the suit at Sakti to which a serious objection as to jurisdiction was raised, the cause of action for making the counter claim arose in favour of the appellant/defendant at Sakti. Therefore, this admission is of no avail to the respondent/plaintiff.

(18) I am of the considered opinion that the learned Additional District Judge, Sakti had no jurisdiction to try the suit. The impugned judgment and decree is, therefore, liable to be set aside. So far as the counter claim preferred by the appellant/defendant is concerned, it would also fail because the Court at Sakti had no jurisdiction to try the suit.

(19) In the result, the appeal is allowed. The impugned judgment and decree passed by the learned Additional District Judge, Sakti in Civil Suit No.7-B/2003 is set aside. The plaint shall be returned to the respondent/plaintiff under Order VII Rule 10 of the Code for presentation before the Court at Raipur having jurisdiction after making the necessary endorsement on the plaint, as required by sub-rule (2) of Rule 10 of Order VII of the Code. Since under Order VIII Rule 6A sub-rule (4) of the Code, the counter claim preferred by the appellant/defendant is also to be treated as a plaint and governed by rules applicable to plaint, the same shall also be returned to the appellant/defendant for presentation before the Court at Raipur having jurisdiction. Necessary intimation required under sub-rule (1) of Rule 10A of Order VII of the Code is given to the learned counsel for the parties. In the circumstances, the respondent/plaintiff shall bear the cost of the suit incurred by the appellant/defendant in Civil Suit No. 7-B/2003 as also in this appeal. Counsel's fee be allowed, as per schedule, if certified.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal